

REMARKS

This Application has been carefully reviewed in light of the Office Action mailed August 4, 2008. At the time of the Office Action, Claims 31-38 were pending in this Application. Claims 31-38 were rejected and Claims 1-30 were previously canceled. Claims 31 and 38 have been amended to further define various features of Applicants' invention. Applicants respectfully request reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 102

Claims 31-38 were rejected by the Examiner under 35 U.S.C. §102(e) as being anticipated by International Application No. WO2001/28171 A1 filed by Kalevi Ratschunas et al. ("*Ratschunas*"). Applicants respectfully traverse and submit the cited art does not teach all of the elements of the claimed embodiment of the invention.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, "the identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co. Ltd.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). Applicant respectfully submits that the art cited as anticipatory by the Examiner cannot anticipate the rejected Claims, because the cited art does not show all the elements of the present Claims.

Applicant submits a new set of claims replacing, without prejudice, the current set of claims. The independent claims 31 and 38 have now been clarified and specify that, upon non-delivery of the data to the second communications unit, the transmission status message includes a non-delivery reason which is selected from at least two non-delivery reasons, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit and that the data could have been delivered, but were not received by the second communications unit. Basis for this amendment can be found throughout the whole application as filed, especially, page 8, lines 1-9. Thus, no new matter has been added. By this amendment a broad interpretation where only one of the two

conditions needs to be meet is no longer possible. A marked-up version of the new set of claims is enclosed, from which the Examiner may take the individual amendments made.

Ratschunas fails to teach at least a method or system, upon non-delivery of the data to the second communications unit, signaling with the transmission status message whether the data could be delivered to the second communications unit and whether the data could have been delivered but were not received by the second communications unit. The Examiner confirms this in his Office Action by stating that *Ratschunas* only teaches whether the data could not be delivered to the communications unit. Office Action, "Response to Arguments".

The rejection under 35 U.S.C. §102 is respectfully traversed because of the clarified amended set of claims filed. Since *Ratschunas* fails to teach at least a method or system, upon non-delivery of the data to the second communications unit, signaling with the transmission status message whether or not the data could be delivered to the second communications unit and if the data could be delivered to the second communications unit whether or not the data was received by the second communications unit, it is respectfully requested that the rejection under 35 U.S.C. §102 is withdrawn. Applicants respectfully submit that the dependent Claims are allowable at least to the extent of the independent Claim to which they refer, respectively. Thus, Applicants respectfully request reconsideration and allowance of the dependent Claims. Applicants reserve the right to make further arguments regarding the Examiner's rejections under 35 U.S.C. §102, if necessary.

Association of Customer Number and Change of Correspondence Address

Applicants respectfully request that all papers pertaining to the above-captioned patent application be associated with Customer No. **31625**, and direct all correspondence pertaining to this patent application to practitioners at Customer Number **31625**. All telephone calls should be directed to Andreas Grubert at 512.322.2545. A Revocation and Power of Attorney is filed herewith.

CONCLUSION

Applicants have now made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicants respectfully request reconsideration of Claims 31-38 as amended.

Applicants believe there are no fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2545.

Respectfully submitted,
BAKER BOTTS L.L.P.
Attorney for Applicants

A handwritten signature in black ink, appearing to read 'A. Grubert', with a stylized, flowing script.

Andreas Grubert
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Date: October 30, 2008

SEND CORRESPONDENCE TO:

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